

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN ASSEMBLY JUNE 26, 2013

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE APRIL 8, 2013

AMENDED IN SENATE MARCH 13, 2013

SENATE BILL

No. 138

**Introduced by Senator Hernandez
(Coauthors: Senators DeSaulnier and Leno)**

January 28, 2013

An act to amend Sections 56.05, 56.104, ~~and 56.16~~ 56.16, 1786.2, and 1798.91 of, and to add Section 56.107 to, the Civil Code, *to amend Section 4053 of the Financial Code*, to amend Sections 1280.15, 1627, 117705, 117928, 120985, 121010, and 130201 of, and to add Section 1348.5 to, the Health and Safety Code, *to amend Section 791.02 of*, and to add Section 791.29 to, the Insurance Code, and to amend ~~Section 3208.05~~ Sections 3208.05, 3762, and 5406.6 of the Labor Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

SB 138, as amended, Hernandez. Confidentiality of medical information.

Existing federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), establishes certain requirements relating to the provision of health insurance, and the protection of privacy of individually identifiable health information.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of its provisions a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance.

Existing law, the Confidentiality of Medical Information Act, provides that medical information, as defined, may not be disclosed by providers of health care, health care service plans, or contractors, as defined, without the patient's written authorization, subject to certain exceptions, including disclosure to a probate court investigator, as specified. A violation of the act resulting in economic loss or personal injury to a patient is a misdemeanor and subjects the violating party to liability for specified damages and administrative fines and penalties. The act defines various terms relevant to its implementation.

Existing law, the Insurance Information and Privacy Protection Act, generally regulates how insurers collect, use, and disclose information gathered in connection with insurance transactions.

This bill would declare the intent of the Legislature to incorporate HIPAA standards into state law and to clarify standards for protecting the confidentiality of medical information in insurance transactions. The bill would define additional terms in connection with maintaining the confidentiality of this information, including a "confidential communications request" which an insured ~~individual, or a subscriber or enrollee under a health care service plan,~~ may submit for the purpose of specifying the method for transmitting ~~insurance~~ medical information communications.

This bill would specify the manner in which a health care service plan or health insurer, *in processing claims on and after January 1, 2015,* would be required to maintain confidentiality of medical information regarding the treatment of *an insured* ~~individuals that involves sensitive services, as defined, including such treatment of those individuals who are insured or covered as dependents on another person's health care service plan or health insurance policy.~~ The bill ~~would require, subscriber, or enrollee, including requiring a health care service plan or health insurer to comply with a nondisclosure request or a confidential communications request from an insured individual, as defined, accommodate requests by insureds, subscribers, and enrollees to receive requests for confidential communication of medical information in situations involving sensitive services or situations in which disclosure would endanger the insured individual.~~

This bill would specifically authorize a provider of health care to communicate information regarding benefit cost-sharing arrangements to the health care service plan or health insurer, as specified.

This bill would also prohibit the health care service plan or health insurer from conditioning enrollment in the plan or eligibility for benefits on ~~the provision of an authorization for insurance communications~~ *waiver of certain rights provided for in the bill*. The bill also would make conforming technical changes. ~~By expanding~~ *Because a willful violation of these provisions by a health care service plan would be a crime, and because this bill would expand the scope of a crime, the bill would create a state-mandated local program.*

~~Existing law, the Insurance Information and Privacy Protection Act, generally regulates how insurers collect, use, and disclose information gathered in connection with insurance transactions.~~

~~This bill would require a health care services plan or a health insurer, as defined, to comply with the requirements of the Confidentiality of Medical Information Act, if that act conflicts with the Insurance Information and Privacy Protection Act, as specified. Because a willful violation of these provisions by a health care service plan would be a crime, this bill would thus impose a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Privacy is a fundamental right of all Californians, protected
- 4 by the California Constitution, the federal Health Insurance
- 5 Portability and Accountability Act (HIPAA; Public Law 104-191),
- 6 and the Confidentiality of Medical Information Act, Part 2.6
- 7 (commencing with Section 56) of Division 1 of the Civil Code.
- 8 (b) Implementation of the recently enacted federal Patient
- 9 Protection and Affordable Care Act (Public Law 111-148) will
- 10 expand the number of individuals insured as dependents on a health

1 insurance policy held in another person's name, including adult
2 children under 26 years of age insured on a parent's insurance
3 policy.

4 (c) HIPAA explicitly protects the confidentiality of medical
5 care obtained by dependents insured under a health insurance
6 policy held by another person.

7 (d) Therefore, it is the intent of the Legislature in enacting this
8 act to incorporate HIPAA standards into state law and to clarify
9 the standards for protecting the confidentiality of medical
10 information in insurance transactions.

11 SEC. 2. Section 56.05 of the Civil Code is amended to read:

12 56.05. For purposes of this part:

13 (a) "Authorization" means permission granted in accordance
14 with Section 56.11 or 56.21 for the disclosure of medical
15 information.

16 (b) "Authorized recipient" means any person who is authorized
17 to receive medical information pursuant to Section 56.10 or 56.20.

18 (c) "Confidential communications request" means a request by
19 ~~an insured individual that insurance communications be~~
20 ~~communicated by a specific method, such as by telephone, email,~~
21 ~~or in a covered envelope rather than postcard, or to a subscriber~~
22 ~~or enrollee that health care service plan communications~~
23 ~~containing medical information be communicated to him or her~~
24 ~~at a specific mail or email e-mail address or specific telephone~~
25 ~~number, as designated by the insured individual subscriber or~~
26 ~~enrollee.~~

27 (d) "Contractor" means any person or entity that is a medical
28 group, independent practice association, pharmaceutical benefits
29 manager, or a medical service organization and is not a health care
30 service plan or provider of health care. "Contractor" does not
31 include insurance institutions as defined in subdivision (k) of
32 Section 791.02 of the Insurance Code or pharmaceutical benefits
33 managers licensed pursuant to the Knox-Keene Health Care Service
34 Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340)
35 of Division 2 of the Health and Safety Code).

36 (e) "Endanger" means that the ~~insured individual fears~~
37 ~~harassment or abuse resulting from an insurance communication~~
38 ~~sufficient to deter the patient from obtaining health care absent~~
39 ~~confidentiality subscriber or enrollee fears that disclosure of his~~

1 *or her medical information could subject the subscriber or enrollee*
2 *to harassment or abuse.*

3 (f) *“Enrollee” has the same meaning as that term is defined in*
4 *Section 1345 of the Health and Safety Code.*

5 ~~(f)~~

6 (g) *“Health care service plan” means any entity regulated*
7 *pursuant to the Knox-Keene Health Care Service Plan Act of 1975*
8 *(Chapter 2.2 (commencing with Section 1340) of Division 2 of*
9 *the Health and Safety Code).*

10 ~~(g) “Health insurer” means an entity that issues health insurance,~~
11 ~~as defined in subdivision (b) of Section 106 of the Insurance Code.~~

12 ~~(h) “Insured individual” means a person entitled to coverage~~
13 ~~under a health care service plan or health insurer, including the~~
14 ~~policyholder, enrollee, and dependents.~~

15 ~~(i) “Insurance communication” means any communication from~~
16 ~~the health care service plan or health insurer to insured individuals~~
17 ~~that discloses individually identifiable medical information.~~
18 ~~Insurance communication includes, but is not limited to,~~
19 ~~explanation of benefits forms, scheduling information, notices of~~
20 ~~denial, and notices of contested claims.~~

21 ~~(j)~~

22 (h) *“Licensed health care professional” means any person*
23 *licensed or certified pursuant to Division 2 (commencing with*
24 *Section 500) of the Business and Professions Code, the Osteopathic*
25 *Initiative Act or the Chiropractic Initiative Act, or Division 2.5*
26 *(commencing with Section 1797) of the Health and Safety Code.*

27 ~~(k)~~

28 (i) *“Marketing” means to make a communication about a product*
29 *or service that encourages recipients of the communication to*
30 *purchase or use the product or service.*

31 *“Marketing” does not include any of the following:*

32 (1) *Communications made orally or in writing for which the*
33 *communicator does not receive direct or indirect remuneration,*
34 *including, but not limited to, gifts, fees, payments, subsidies, or*
35 *other economic benefits, from a third party for making the*
36 *communication.*

37 (2) *Communications made to current enrollees solely for the*
38 *purpose of describing a provider’s participation in an existing*
39 *health care provider network or health plan network of a*
40 *Knox-Keene licensed health plan to which the enrollees already*

1 subscribe; communications made to current enrollees solely for
2 the purpose of describing if, and the extent to which, a product or
3 service, or payment for a product or service, is provided by a
4 provider, contractor, or plan or included in a plan of benefits of a
5 Knox-Keene licensed health plan to which the enrollees already
6 subscribe; or communications made to plan enrollees describing
7 the availability of more cost-effective pharmaceuticals.

8 (3) Communications that are tailored to the circumstances of a
9 particular individual to educate or advise the individual about
10 treatment options, and otherwise maintain the individual's
11 adherence to a prescribed course of medical treatment, as provided
12 in Section 1399.901 of the Health and Safety Code, for a chronic
13 and seriously debilitating or life-threatening condition as defined
14 in subdivisions (d) and (e) of Section 1367.21 of the Health and
15 Safety Code, if the health care provider, contractor, or health plan
16 receives direct or indirect remuneration, including, but not limited
17 to, gifts, fees, payments, subsidies, or other economic benefits,
18 from a third party for making the communication, if all of the
19 following apply:

20 (A) The individual receiving the communication is notified in
21 the communication in typeface no smaller than 14-point type of
22 the fact that the provider, contractor, or health plan has been
23 remunerated and the source of the remuneration.

24 (B) The individual is provided the opportunity to opt out of
25 receiving future remunerated communications.

26 (C) The communication contains instructions in typeface no
27 smaller than 14-point type describing how the individual can opt
28 out of receiving further communications by calling a toll-free
29 number of the health care provider, contractor, or health plan
30 making the remunerated communications. No further
31 communication may be made to an individual who has opted out
32 after 30 calendar days from the date the individual makes the opt
33 out request.

34 ~~(D)~~

35 (j) "Medical information" means any individually identifiable
36 information, in electronic or physical form, in possession of or
37 derived from a provider of health care, health care service plan,
38 pharmaceutical company, or contractor regarding a patient's
39 medical history, mental or physical condition, or treatment.
40 "Individually identifiable" means that the medical information

1 includes or contains any element of personal identifying
2 information sufficient to allow identification of the individual,
3 such as the patient's name, address, electronic mail address,
4 telephone number, or social security number, or other information
5 that, alone or in combination with other publicly available
6 information, reveals the individual's identity.

7 ~~(m) "Nondisclosure request" means a request by an insured~~
8 ~~individual to withhold insurance communications that includes~~
9 ~~the insured individual's name and address, description of the~~
10 ~~medical or other information that should not be disclosed, and~~
11 ~~alternative contact information for the individual for additional~~
12 ~~information or clarification necessary to satisfy the request.~~

13 ~~(n)~~

14 (k) "Patient" means any natural person, whether or not still
15 living, who received health care services from a provider of health
16 care and to whom medical information pertains.

17 ~~(o)~~

18 (l) "Pharmaceutical company" means any company or business,
19 or an agent or representative thereof, that manufactures, sells, or
20 distributes pharmaceuticals, medications, or prescription drugs.
21 "Pharmaceutical company" does not include a pharmaceutical
22 benefits manager, as included in subdivision (c), or a provider of
23 health care.

24 ~~(p)~~

25 (m) "Provider of health care" means any person licensed or
26 certified pursuant to Division 2 (commencing with Section 500)
27 of the Business and Professions Code; any person licensed pursuant
28 to the Osteopathic Initiative Act or the Chiropractic Initiative Act;
29 any person certified pursuant to Division 2.5 (commencing with
30 Section 1797) of the Health and Safety Code; any clinic, health
31 dispensary, or health facility licensed pursuant to Division 2
32 (commencing with Section 1200) of the Health and Safety Code.
33 "Provider of health care" does not include insurance institutions
34 as defined in subdivision (k) of Section 791.02 of the Insurance
35 Code.

36 ~~(q)~~

37 (n) "Sensitive services" means all health care services described
38 in Sections 6924, 6925, 6926, 6927, 6928, and 6929 of the Family
39 Code, and Sections 121020 and 124260 of the Health and Safety
40 Code, obtained by any patient who has reached a patient at or

1 *above* the minimum age specified for consenting to the service
2 specified in the ~~section, including patients 18 years of age and~~
3 ~~older.~~ *section.*

4 (o) “Subscriber” has the same meaning as that term is defined
5 in Section 1345 of the Health and Safety Code.

6 SEC. 3. Section 56.104 of the Civil Code is amended to read:

7 56.104. (a) Notwithstanding subdivision (c) of Section 56.10,
8 except as provided in subdivision (e), no provider of health care,
9 health care service plan, or contractor may release medical
10 information to persons or entities who have requested that
11 information and who are authorized by law to receive that
12 information pursuant to subdivision (c) of Section 56.10, if the
13 requested information specifically relates to the patient’s
14 participation in outpatient treatment with a psychotherapist, unless
15 the person or entity requesting that information submits to the
16 patient pursuant to subdivision (b) and to the provider of health
17 care, health care service plan, or contractor a written request, signed
18 by the person requesting the information or an authorized agent
19 of the entity requesting the information, that includes all of the
20 following:

21 (1) The specific information relating to a patient’s participation
22 in outpatient treatment with a psychotherapist being requested and
23 its specific intended use or uses.

24 (2) The length of time during which the information will be
25 kept before being destroyed or disposed of. A person or entity may
26 extend that timeframe, provided that the person or entity notifies
27 the provider, plan, or contractor of the extension. Any notification
28 of an extension shall include the specific reason for the extension,
29 the intended use or uses of the information during the extended
30 time, and the expected date of the destruction of the information.

31 (3) A statement that the information will not be used for any
32 purpose other than its intended use.

33 (4) A statement that the person or entity requesting the
34 information will destroy the information and all copies in the
35 person’s or entity’s possession or control, will cause it to be
36 destroyed, or will return the information and all copies of it before
37 or immediately after the length of time specified in paragraph (2)
38 has expired.

39 (b) The person or entity requesting the information shall submit
40 a copy of the written request required by this section to the patient

1 within 30 days of receipt of the information requested, unless the
2 patient has signed a written waiver in the form of a letter signed
3 and submitted by the patient to the provider of health care or health
4 care service plan waiving notification.

5 (c) For purposes of this section, “psychotherapist” means a
6 person who is both a “psychotherapist” as defined in Section 1010
7 of the Evidence Code and a “provider of health care” as defined
8 in Section 56.05.

9 (d) This section does not apply to the disclosure or use of
10 medical information by a law enforcement agency or a regulatory
11 agency when required for an investigation of unlawful activity or
12 for licensing, certification, or regulatory purposes, unless the
13 disclosure is otherwise prohibited by law.

14 (e) This section shall not apply to any of the following:

15 (1) Information authorized to be disclosed pursuant to paragraph
16 (1) of subdivision (c) of Section 56.10.

17 (2) Information requested from a psychotherapist by law
18 enforcement or by the target of the threat subsequent to a disclosure
19 by that psychotherapist authorized by paragraph (19) of subdivision
20 (c) of Section 56.10, in which the additional information is clearly
21 necessary to prevent the serious and imminent threat disclosed
22 under that paragraph.

23 (3) Information disclosed by a psychotherapist pursuant to
24 paragraphs (14) and (22) of subdivision (c) of Section 56.10 and
25 requested by an agency investigating the abuse reported pursuant
26 to those paragraphs.

27 (f) Nothing in this section shall be construed to grant any
28 additional authority to a provider of health care, health care service
29 plan, or contractor to disclose information to a person or entity
30 without the patient’s consent.

31 SEC. 4. Section 56.107 is added to the Civil Code, to read:

32 56.107. (a) Notwithstanding any other law, and to the extent
33 permitted by federal law, a health care service plan or health insurer
34 shall take the following steps to protect the confidentiality of an
35 insured individual’s a subscriber’s or enrollee’s medical
36 information as follows: on and after January 1, 2015:

37 (1) ~~A health care service plan or health insurer shall not send~~
38 ~~insurance communications relating to sensitive services for an~~
39 ~~insured individual who is insured or covered as a dependent on~~
40 ~~another person’s health care service plan or health insurance policy,~~

1 unless the insurance communication is required by federal law. If
2 required by federal law, the health care service plan or health
3 insurer shall comply with either of the following:

4 (A) The health care service plan or health insurer shall send the
5 required insurance communication to the insured individual in
6 compliance with a confidential communications request received
7 from the insured individual.

8 (B) If the health care service plan or health insurer has not
9 received a confidential communications request, it shall send the
10 required insurance communication to the insured individual, and
11 may do so at the address furnished by the policyholder.

12 (2) A health care service plan or health insurer shall comply
13 with a nondisclosure request or a confidential communications
14 request from an insured individual who states that disclosure of
15 medical information will endanger the individual, and shall not
16 require an explanation as to the basis for the insured individual's
17 statement that disclosure will endanger the individual.

18 (1) A health care service plan shall permit subscribers and
19 enrollees to request, and shall accommodate requests for,
20 communication in the form and format requested by the individual,
21 if it is readily producible in the requested form and format, or at
22 alternative locations, if the subscriber or enrollee clearly states
23 either that the communication discloses medical information or
24 provider name and address relating to receipt of sensitive services
25 or that disclosure of all or part of the medical information or
26 provider name and address could endanger the subscriber or
27 enrollee.

28 (2) A health care service plan may require the subscriber or
29 enrollee to make a request for a confidential communication
30 described in paragraph (1), in writing or by electronic
31 transmission.

32 (3) A health care service plan may require that a confidential
33 communications request contain a statement that the request
34 pertains to either medical information related to the receipt of
35 sensitive services or that disclosure of all or part of the medical
36 information could endanger the subscriber or enrollee. The health
37 care service plan shall not require an explanation as to the basis
38 for a subscriber's or enrollee's statement that disclosure could
39 endanger the subscriber or enrollee.

1 (4) *The confidential communication request shall be valid until*
2 *the subscriber or enrollee submits a revocation of the request or*
3 *a new confidential communication request is submitted.*

4 ~~(b)~~

5 (5) For the purposes of this section, a confidential
6 communications request ~~or a nondisclosure request is deemed~~
7 ~~received by the health care service plan or the health insurer within~~
8 ~~24 hours of electronic transmission or within 72 hours of posting~~
9 ~~by first class mail shall be implemented by the health care service~~
10 ~~plan within seven calendar days of receipt of an electronic~~
11 ~~transmission or telephonic request or within 14 calendar days of~~
12 ~~receipt by first-class mail. The health care service plan shall~~
13 ~~acknowledge receipt of the confidential communications request~~
14 ~~and advise the subscriber or enrollee of the status of~~
15 ~~implementation of the request if a subscriber or enrollee contacts~~
16 ~~the health care service plan.~~

17 ~~(e)~~

18 (b) Notwithstanding subdivision (a), the provider of health care
19 may make arrangements with the ~~insured individual~~ subscriber or
20 enrollee for the payment of benefit cost sharing and communicate
21 that arrangement with the health care service plan ~~or health insurer.~~

22 ~~(d)~~

23 (c) A health care service plan ~~or health insurer~~ shall not
24 condition enrollment or coverage ~~in the health plan or health~~
25 ~~insurance policy or eligibility for benefits on the provision of an~~
26 ~~authorization for insurance communications on the waiver of rights~~
27 ~~provided in this section.~~

28 SEC. 5. Section 56.16 of the Civil Code is amended to read:

29 56.16. For disclosures not addressed by Section 56.1007, unless
30 there is a specific written request by the patient to the contrary,
31 nothing in this part shall be construed to prevent a general acute
32 care hospital, as defined in subdivision (a) of Section 1250 of the
33 Health and Safety Code, upon an inquiry concerning a specific
34 patient, from releasing at its discretion any of the following
35 information: the patient's name, address, age, and sex; a general
36 description of the reason for treatment (whether an injury, a burn,
37 poisoning, or some unrelated condition); the general nature of the
38 injury, burn, poisoning, or other condition; the general condition
39 of the patient; and any information that is not medical information
40 as defined in Section 56.05.

1 *SEC. 6. Section 1786.2 of the Civil Code is amended to read:*

2 1786.2. The following terms as used in this title have the
3 meaning expressed in this section:

4 (a) The term “person” means any individual, partnership,
5 corporation, limited liability company, trust, estate, cooperative,
6 association, government or governmental subdivision or agency,
7 or other entity. The term “person” as used in this title shall not be
8 construed to require duplicative reporting by any individual,
9 corporation, trust, estate, cooperative, association, government, or
10 governmental subdivision or agency, or other entity involved in
11 the same transaction.

12 (b) The term “consumer” means a natural individual who has
13 made application to a person for employment purposes, for
14 insurance for personal, family, or household purposes, or the hiring
15 of a dwelling unit, as defined in subdivision (c) of Section 1940.

16 (c) The term “investigative consumer report” means a consumer
17 report in which information on a consumer’s character, general
18 reputation, personal characteristics, or mode of living is obtained
19 through any means. The term does not include a consumer report
20 or other compilation of information that is limited to specific
21 factual information relating to a consumer’s credit record or manner
22 of obtaining credit obtained directly from a creditor of the
23 consumer or from a consumer reporting agency when that
24 information was obtained directly from a potential or existing
25 creditor of the consumer or from the consumer. Notwithstanding
26 the foregoing, for transactions between investigative consumer
27 reporting agencies and insurance institutions, agents, or
28 insurance-support organizations subject to Article 6.6 (commencing
29 with Section 791) of Chapter 1 of Part 2 of Division 1 of the
30 Insurance Code, the term “investigative consumer report” shall
31 have the meaning set forth in ~~subdivision (n)~~ of Section 791.02 of
32 the Insurance Code.

33 (d) The term “investigative consumer reporting agency” means
34 any person who, for monetary fees or dues, engages in whole or
35 in part in the practice of collecting, assembling, evaluating,
36 compiling, reporting, transmitting, transferring, or communicating
37 information concerning consumers for the purposes of furnishing
38 investigative consumer reports to third parties, but does not include
39 any governmental agency whose records are maintained primarily
40 for traffic safety, law enforcement, or licensing purposes, or any

1 licensed insurance agent, insurance broker, or solicitor, insurer,
2 or life insurance agent.

3 (e) The term “file,” when used in connection with information
4 on any consumer, means all of the information on that consumer
5 recorded and retained by an investigative consumer reporting
6 agency regardless of how the information is stored.

7 (f) The term “employment purposes,” when used in connection
8 with an investigative consumer report, means a report used for the
9 purpose of evaluating a consumer for employment, promotion,
10 reassignment, or retention as an employee.

11 (g) The term “medical information” means information on a
12 person’s medical history or condition obtained directly or indirectly
13 from a licensed physician, medical practitioner, hospital, clinic,
14 or other medical or medically related facility.

15 *SEC. 7. Section 1798.91 of the Civil Code is amended to read:*

16 1798.91. (a) For purposes of this title, the following definitions
17 shall apply:

18 (1) “Direct marketing purposes” means the use of personal
19 information for marketing or advertising products, goods, or
20 services directly to individuals. “Direct marketing purposes” does
21 not include the use of personal information (A) by bona fide tax
22 exempt charitable or religious organizations to solicit charitable
23 contributions or (B) to raise funds from and communicate with
24 individuals regarding politics and government.

25 (2) “Medical information” means any individually identifiable
26 information, in electronic or physical form, regarding the
27 individual’s medical history, or medical treatment or diagnosis by
28 a health care professional. “Individually identifiable” means that
29 the medical information includes or contains any element of
30 personal identifying information sufficient to allow identification
31 of the individual, such as the individual’s name, address, electronic
32 mail address, telephone number, or social security number, or other
33 information that, alone or in combination with other publicly
34 available information, reveals the individual’s identity. For
35 purposes of this section, “medical information” does not mean a
36 subscription to, purchase of, or request for a periodical, book,
37 pamphlet, video, audio, or other multimedia product or nonprofit
38 association information.

39 (3) “Clear and conspicuous” means in larger type than the
40 surrounding text, or in contrasting type, font, or color to the

1 surrounding text of the same size, or set off from the surrounding
2 text of the same size by symbols or other marks that call attention
3 to the language.

4 (4) For purposes of this section, the collection of medical
5 information online constitutes “in writing.” For purposes of this
6 section, “written consent” includes consent obtained online.

7 (b) A business may not orally request medical information
8 directly from an individual regardless of whether the information
9 pertains to the individual or not, and use, share, or otherwise
10 disclose that information for direct marketing purposes, without
11 doing both of the following prior to obtaining that information:

12 (1) Orally disclosing to the individual in the same conversation
13 during which the business seeks to obtain the information, that it
14 is obtaining the information to market or advertise products, goods,
15 or services to the individual.

16 (2) Obtaining the consent of either the individual to whom the
17 information pertains or a person legally authorized to consent for
18 the individual, to permit his or her medical information to be used
19 or shared to market or advertise products, goods, or services to the
20 individual, and making and maintaining for two years after the
21 date of the conversation, an audio recording of the entire
22 conversation.

23 (c) A business may not request in writing medical information
24 directly from an individual regardless of whether the information
25 pertains to the individual or not, and use, share, or otherwise
26 disclose that information for direct marketing purposes, without
27 doing both of the following prior to obtaining that information:

28 (1) Disclosing in a clear and conspicuous manner that it is
29 obtaining the information to market or advertise products, goods,
30 or services to the individual.

31 (2) Obtaining the written consent of either the individual to
32 whom the information pertains or a person legally authorized to
33 consent for the individual, to permit his or her medical information
34 to be used or shared to market or advertise products, goods, or
35 services to the individual.

36 (d) This section does not apply to a provider of health care,
37 health care service plan, or contractor, as defined in Section 56.05.

38 (e) This section shall not apply to an insurance institution, agent,
39 or support organization, as defined in Section 791.02 of the
40 Insurance Code, when engaged in an insurance transaction, as

1 defined in ~~subdivision (m)~~ of Section 791.02 of the Insurance
2 Code, pursuant to all the requirements of Article 6.6 (commencing
3 with Section 791) of Chapter 1 of Part 2 of Division 1 of the
4 Insurance Code, and the regulations promulgated thereunder.

5 (f) This section does not apply to a telephone corporation, as
6 defined in Section 234 of the Public Utilities Code, when that
7 corporation is engaged in providing telephone services and products
8 pursuant to Sections 2881, 2881.1, and 2881.2 of the Public
9 Utilities Code, if the corporation does not share or disclose medical
10 information obtained as a consequence of complying with those
11 sections of the Public Utilities Code, to third parties for direct
12 marketing purposes.

13 *SEC. 8. Section 4053 of the Financial Code is amended to*
14 *read:*

15 4053. (a) (1) A financial institution shall not disclose to, or
16 share a consumer's nonpublic personal information with, any
17 nonaffiliated third party as prohibited by Section 4052.5, unless
18 the financial institution has obtained a consent acknowledgment
19 from the consumer that complies with paragraph (2) that authorizes
20 the financial institution to disclose or share the nonpublic personal
21 information. Nothing in this section shall prohibit or otherwise
22 apply to the disclosure of nonpublic personal information as
23 allowed in Section 4056. A financial institution shall not
24 discriminate against or deny an otherwise qualified consumer a
25 financial product or a financial service because the consumer has
26 not provided consent pursuant to this subdivision and Section
27 4052.5 to authorize the financial institution to disclose or share
28 nonpublic personal information pertaining to him or her with any
29 nonaffiliated third party. Nothing in this section shall prohibit a
30 financial institution from denying a consumer a financial product
31 or service if the financial institution could not provide the product
32 or service to a consumer without the consent to disclose the
33 consumer's nonpublic personal information required by this
34 subdivision and Section 4052.5, and the consumer has failed to
35 provide consent. A financial institution shall not be liable for failing
36 to offer products and services to a consumer solely because that
37 consumer has failed to provide consent pursuant to this subdivision
38 and Section 4052.5 and the financial institution could not offer the
39 product or service without the consent to disclose the consumer's
40 nonpublic personal information required by this subdivision and

1 Section 4052.5, and the consumer has failed to provide consent.
2 Nothing in this section is intended to prohibit a financial institution
3 from offering incentives or discounts to elicit a specific response
4 to the notice.

5 (2) A financial institution shall utilize a form, statement, or
6 writing to obtain consent to disclose nonpublic personal
7 information to nonaffiliated third parties as required by Section
8 4052.5 and this subdivision. The form, statement, or writing shall
9 meet all of the following criteria:

10 (A) The form, statement, or writing is a separate document, not
11 attached to any other document.

12 (B) The form, statement, or writing is dated and signed by the
13 consumer.

14 (C) The form, statement, or writing clearly and conspicuously
15 discloses that by signing, the consumer is consenting to the
16 disclosure to nonaffiliated third parties of nonpublic personal
17 information pertaining to the consumer.

18 (D) The form, statement, or writing clearly and conspicuously
19 discloses (i) that the consent will remain in effect until revoked or
20 modified by the consumer; (ii) that the consumer may revoke the
21 consent at any time; and (iii) the procedure for the consumer to
22 revoke consent.

23 (E) The form, statement, or writing clearly and conspicuously
24 informs the consumer that (i) the financial institution will maintain
25 the document or a true and correct copy; (ii) the consumer is
26 entitled to a copy of the document upon request; and (iii) the
27 consumer may want to make a copy of the document for the
28 consumer's records.

29 (b) (1) A financial institution shall not disclose to, or share a
30 consumer's nonpublic personal information with, an affiliate unless
31 the financial institution has clearly and conspicuously notified the
32 consumer annually in writing pursuant to subdivision (d) that the
33 nonpublic personal information may be disclosed to an affiliate of
34 the financial institution and the consumer has not directed that the
35 nonpublic personal information not be disclosed. A financial
36 institution does not disclose information to, or share information
37 with, its affiliate merely because information is maintained in
38 common information systems or databases, and employees of the
39 financial institution and its affiliate have access to those common
40 information systems or databases, or a consumer accesses a Web

1 site jointly operated or maintained under a common name by or
2 on behalf of the financial institution and its affiliate, provided that
3 where a consumer has exercised his or her right to prohibit
4 disclosure pursuant to this division, nonpublic personal information
5 is not further disclosed or used by an affiliate except as permitted
6 by this division.

7 (2) Subdivision (a) shall not prohibit the release of nonpublic
8 personal information by a financial institution with whom the
9 consumer has a relationship to a nonaffiliated financial institution
10 for purposes of jointly offering a financial product or financial
11 service pursuant to a written agreement with the financial
12 institution that receives the nonpublic personal information
13 provided that all of the following requirements are met:

14 (A) The financial product or service offered is a product or
15 service of, and is provided by, at least one of the financial
16 institutions that is a party to the written agreement.

17 (B) The financial product or service is jointly offered, endorsed,
18 or sponsored, and clearly and conspicuously identifies for the
19 consumer the financial institutions that disclose and receive the
20 disclosed nonpublic personal information.

21 (C) The written agreement provides that the financial institution
22 that receives that nonpublic personal information is required to
23 maintain the confidentiality of the information and is prohibited
24 from disclosing or using the information other than to carry out
25 the joint offering or servicing of a financial product or financial
26 service that is the subject of the written agreement.

27 (D) The financial institution that releases the nonpublic personal
28 information has complied with subdivision (d) and the consumer
29 has not directed that the nonpublic personal information not be
30 disclosed.

31 (E) Notwithstanding this section, until January 1, 2005, a
32 financial institution may disclose nonpublic personal information
33 to a nonaffiliated financial institution pursuant to a preexisting
34 contract with the nonaffiliated financial institution, for purposes
35 of offering a financial product or financial service, if that contract
36 was entered into on or before January 1, 2004. Beginning on
37 January 1, 2005, no nonpublic personal information may be
38 disclosed pursuant to that contract unless all the requirements of
39 this subdivision are met.

1 (3) Nothing in this subdivision shall prohibit a financial
2 institution from disclosing or sharing nonpublic personal
3 information as otherwise specifically permitted by this division.

4 (4) A financial institution shall not discriminate against or deny
5 an otherwise qualified consumer a financial product or a financial
6 service because the consumer has directed pursuant to this
7 subdivision that nonpublic personal information pertaining to him
8 or her not be disclosed. A financial institution shall not be required
9 to offer or provide products or services offered through affiliated
10 entities or jointly with nonaffiliated financial institutions pursuant
11 to paragraph (2) where the consumer has directed that nonpublic
12 personal information not be disclosed pursuant to this subdivision
13 and the financial institution could not offer or provide the products
14 or services to the consumer without disclosure of the consumer's
15 nonpublic personal information that the consumer has directed not
16 be disclosed pursuant to this subdivision. A financial institution
17 shall not be liable for failing to offer or provide products or services
18 offered through affiliated entities or jointly with nonaffiliated
19 financial institutions pursuant to paragraph (2) solely because the
20 consumer has directed that nonpublic personal information not be
21 disclosed pursuant to this subdivision and the financial institution
22 could not offer or provide the products or services to the consumer
23 without disclosure of the consumer's nonpublic personal
24 information that the consumer has directed not be disclosed to
25 affiliates pursuant to this subdivision. Nothing in this section is
26 intended to prohibit a financial institution from offering incentives
27 or discounts to elicit a specific response to the notice set forth in
28 this division. Nothing in this section shall prohibit the disclosure
29 of nonpublic personal information allowed by Section 4056.

30 (5) The financial institution may, at its option, choose instead
31 to comply with the requirements of subdivision (a).

32 (c) Nothing in this division shall restrict or prohibit the sharing
33 of nonpublic personal information between a financial institution
34 and its wholly owned financial institution subsidiaries; among
35 financial institutions that are each wholly owned by the same
36 financial institution; among financial institutions that are wholly
37 owned by the same holding company; or among the insurance and
38 management entities of a single insurance holding company system
39 consisting of one or more reciprocal insurance exchanges which
40 has a single corporation or its wholly owned subsidiaries providing

1 management services to the reciprocal insurance exchanges,
2 provided that in each case all of the following requirements are
3 met:

4 (1) The financial institution disclosing the nonpublic personal
5 information and the financial institution receiving it are regulated
6 by the same functional regulator; provided, however, that for
7 purposes of this subdivision, financial institutions regulated by the
8 Office of the Comptroller of the Currency, Office of Thrift
9 Supervision, National Credit Union Administration, or a state
10 regulator of depository institutions shall be deemed to be regulated
11 by the same functional regulator; financial institutions regulated
12 by the Securities and Exchange Commission, the United States
13 Department of Labor, or a state securities regulator shall be deemed
14 to be regulated by the same functional regulator; and insurers
15 admitted in this state to transact insurance and licensed to write
16 insurance policies shall be deemed to be in compliance with this
17 paragraph.

18 (2) The financial institution disclosing the nonpublic personal
19 information and the financial institution receiving it are both
20 principally engaged in the same line of business. For purposes of
21 this subdivision, “same line of business” shall be one and only one
22 of the following:

- 23 (A) Insurance.
- 24 (B) Banking.
- 25 (C) Securities.

26 (3) The financial institution disclosing the nonpublic personal
27 information and the financial institution receiving it share a
28 common brand, excluding a brand consisting solely of a graphic
29 element or symbol, within their trademark, service mark, or trade
30 name, which is used to identify the source of the products and
31 services provided.

32 A wholly owned subsidiary shall include a subsidiary wholly
33 owned directly or wholly owned indirectly in a chain of wholly
34 owned subsidiaries.

35 Nothing in this subdivision shall permit the disclosure by a
36 financial institution of medical record information, as defined in
37 ~~subdivision (q) of~~ Section 791.02 of the Insurance Code, except
38 in compliance with the requirements of this division, including the
39 requirements set forth in subdivisions (a) and (b).

1 (d) (1) A financial institution shall be conclusively presumed
2 to have satisfied the notice requirements of subdivision (b) if it
3 uses the form set forth in this subdivision. The form set forth in
4 this subdivision or a form that complies with subparagraphs (A)
5 to (L), inclusive, of this paragraph shall be sent by the financial
6 institution to the consumer so that the consumer may make a
7 decision and provide direction to the financial institution regarding
8 the sharing of his or her nonpublic personal information. If a
9 financial institution does not use the form set forth in this
10 subdivision, the financial institution shall use a form that meets
11 all of the following requirements:

12 (A) The form uses the same title (“IMPORTANT PRIVACY
13 CHOICES FOR CONSUMERS”) and the headers, if applicable,
14 as follows: “Restrict Information Sharing With Companies We
15 Own Or Control (Affiliates)” and “Restrict Information Sharing
16 With Other Companies We Do Business With To Provide Financial
17 Products And Services.”

18 (B) The titles and headers in the form are clearly and
19 conspicuously displayed, and no text in the form is smaller than
20 10-point type.

21 (C) The form is a separate document, except as provided by
22 subparagraph (D) of paragraph (2), and Sections 4054 and 4058.7.

23 (D) The choice or choices pursuant to subdivision (b) and
24 Section 4054.6, if applicable, provided in the form are stated
25 separately and may be selected by checking a box.

26 (E) The form is designed to call attention to the nature and
27 significance of the information in the document.

28 (F) The form presents information in clear and concise
29 sentences, paragraphs, and sections.

30 (G) The form uses short explanatory sentences (an average of
31 15-20 words) or bullet lists whenever possible.

32 (H) The form avoids multiple negatives, legal terminology, and
33 highly technical terminology whenever possible.

34 (I) The form avoids explanations that are imprecise and readily
35 subject to different interpretations.

36 (J) The form achieves a minimum Flesch reading ease score of
37 50, as defined in Section 2689.4(a)(7) of Title 10 of the California
38 Code of Regulations, in effect on March 24, 2003, except that the
39 information in the form included to comply with subparagraph (A)
40 shall not be included in the calculation of the Flesch reading ease

1 score, and the information used to describe the choice or choices
2 pursuant to subparagraph (D) shall score no lower than the
3 information describing the comparable choice or choices set forth
4 in the form in this subdivision.

5 (K) The form provides wide margins, ample line spacing and
6 uses boldface or italics for key words.

7 (L) The form is not more than one page.

8 (2) (A) None of the instructional items appearing in brackets
9 in the form set forth in this subdivision shall appear in the form
10 provided to the consumer, as those items are for explanation
11 purposes only. If a financial institution does not disclose or share
12 nonpublic personal information as described in a header of the
13 form, the financial institution may omit the applicable header or
14 headers, and the accompanying information and box, in the form
15 it provides pursuant to this subdivision. The form with those
16 omissions shall be conclusively presumed to satisfy the notice
17 requirements of this subdivision.

Important Privacy Choices for Consumers

**You have the right to control whether we share some of your personal information.
Please read the following information carefully before you make your choices below.**

Your Rights

You have the following rights to restrict the sharing of personal and financial information with our affiliates (companies we own or control) and outside companies that we do business with. Nothing in this form prohibits the sharing of information necessary for us to follow the law, as permitted by law, or to give you the best service on your accounts with us. This includes sending you information about some other products or services.

Your Choices

Restrict Information Sharing With Companies We Own or Control (Affiliates): Unless you say “No,” we may share personal and financial information about you with our affiliated companies.

(_) NO, please do not share personal and financial information with your affiliated companies.

Restrict Information Sharing With Other Companies We Do Business With To Provide Financial Products And Services: Unless you say “No,” we may share personal and financial information about you with outside companies we contract with to provide financial products and services to you.

(_) NO, please do not share personal and financial information with outside companies you contract with to provide financial products and services.

Time Sensitive Reply

You may make your privacy choices(s) at any time. Your choice(s) marked here will remain unless you state otherwise. However, if we do not hear from you we may share some of your information with affiliated companies and other companies with whom we have contracts to provide products and services.

Name: _____

Account or Policy Number(s): _____ [to be filled in by consumer]

Signature: _____

To exercise your choices do [one of] the following:

(1) Fill out, sign and send back this form to us using the envelope provided (you may want to make a copy for your records); [#1 is mandatory]

[(2) Call this toll-free number (800) xxx-xxxx or (xxx) xxx-xxxx; [optional]

[(3) Reply electronically by contacting us through the following Internet option: xxxxx.com) [optional]

1 (B) If a financial institution uses a form other than that set forth
2 in this subdivision, the financial institution may submit that form
3 to its functional regulator for approval, and for forms filed with
4 the Office of Privacy Protection prior to July 1, 2007, that approval
5 shall constitute a rebuttable presumption that the form complies
6 with this section.

7 (C) A financial institution shall not be in violation of this
8 subdivision solely because it includes in the form one or more
9 brief examples or explanations of the purpose or purposes, or
10 context, within which information will be shared, as long as those
11 examples meet the clarity and readability standards set forth in
12 paragraph (1).

13 (D) The outside of the envelope in which the form is sent to the
14 consumer shall clearly state in 16-point boldface type
15 “IMPORTANT PRIVACY CHOICES,” except that a financial
16 institution sending the form to a consumer in the same envelope
17 as a bill, account statement, or application requested by the
18 consumer does not have to include the wording “IMPORTANT
19 PRIVACY CHOICES” on that envelope. The form shall be sent
20 in any of the following ways:

21 (i) With a bill, other statement of account, or application
22 requested by the consumer, in which case the information required
23 by Title V of the Gramm-Leach-Bliley Act may also be included
24 in the same envelope.

25 (ii) As a separate notice or with the information required by
26 Title V of the Gramm-Leach-Bliley Act, and including only
27 information related to privacy.

28 (iii) With any other mailing, in which case it shall be the first
29 page of the mailing.

30 (E) If a financial institution uses a form other than that set forth
31 in this subdivision, that form shall be filed with the Office of
32 Privacy Protection within 30 days after it is first used.

33 (3) The consumer shall be provided a reasonable opportunity
34 prior to disclosure of nonpublic personal information to direct that
35 nonpublic personal information not be disclosed. A consumer may
36 direct at any time that his or her nonpublic personal information
37 not be disclosed. A financial institution shall comply with a
38 consumer’s directions concerning the sharing of his or her
39 nonpublic personal information within 45 days of receipt by the
40 financial institution. When a consumer directs that nonpublic

1 personal information not be disclosed, that direction is in effect
2 until otherwise stated by the consumer. A financial institution that
3 has not provided a consumer with annual notice pursuant to
4 subdivision (b) shall provide the consumer with a form that meets
5 the requirements of this subdivision, and shall allow 45 days to
6 lapse from the date of providing the form in person or the postmark
7 or other postal verification of mailing before disclosing nonpublic
8 personal information pertaining to the consumer.

9 Nothing in this subdivision shall prohibit the disclosure of
10 nonpublic personal information as allowed by subdivision (c) or
11 Section 4056.

12 (4) A financial institution may elect to comply with the
13 requirements of subdivision (a) with respect to disclosure of
14 nonpublic personal information to an affiliate or with respect to
15 nonpublic personal information disclosed pursuant to paragraph
16 (2) of subdivision (b), or subdivision (c) of Section 4054.6.

17 (5) If a financial institution does not have a continuing
18 relationship with a consumer other than the initial transaction in
19 which the product or service is provided, no annual disclosure
20 requirement exists pursuant to this section as long as the financial
21 institution provides the consumer with the form required by this
22 section at the time of the initial transaction. As used in this section,
23 “annually” means at least once in any period of 12 consecutive
24 months during which that relationship exists. The financial
25 institution may define the 12-consecutive-month period, but shall
26 apply it to the consumer on a consistent basis. If, for example, a
27 financial institution defines the 12-consecutive-month period as a
28 calendar year and provides the annual notice to the consumer once
29 in each calendar year, it complies with the requirement to send the
30 notice annually.

31 (6) A financial institution with assets in excess of twenty-five
32 million dollars (\$25,000,000) shall include a self-addressed first
33 class business reply return envelope with the notice. A financial
34 institution with assets of up to and including twenty-five million
35 dollars (\$25,000,000) shall include a self-addressed return envelope
36 with the notice. In lieu of the first class business reply return
37 envelope required by this paragraph, a financial institution may
38 offer a self-addressed return envelope with the notice and at least
39 two alternative cost-free means for consumers to communicate
40 their privacy choices, such as calling a toll-free number, sending

1 a facsimile to a toll-free telephone number, or using electronic
2 means. A financial institution shall clearly and conspicuously
3 disclose in the form required by this subdivision the information
4 necessary to direct the consumer on how to communicate his or
5 her choices, including the toll-free or facsimile number or Web
6 site address that may be used, if those means of communication
7 are offered by the financial institution.

8 (7) A financial institution may provide a joint notice from it and
9 one or more of its affiliates or other financial institutions, as
10 identified in the notice, so long as the notice is accurate with
11 respect to the financial institution and the affiliates and other
12 financial institutions.

13 (e) Nothing in this division shall prohibit a financial institution
14 from marketing its own products and services or the products and
15 services of affiliates or nonaffiliated third parties to customers of
16 the financial institution as long as (1) nonpublic personal
17 information is not disclosed in connection with the delivery of the
18 applicable marketing materials to those customers except as
19 permitted by Section 4056 and (2) in cases in which the applicable
20 nonaffiliated third party may extrapolate nonpublic personal
21 information about the consumer responding to those marketing
22 materials, the applicable nonaffiliated third party has signed a
23 contract with the financial institution under the terms of which (A)
24 the nonaffiliated third party is prohibited from using that
25 information for any purpose other than the purpose for which it
26 was provided, as set forth in the contract, and (B) the financial
27 institution has the right by audit, inspections, or other means to
28 verify the nonaffiliated third party's compliance with that contract.

29 ~~SEC. 6.~~

30 *SEC. 9.* Section 1280.15 of the Health and Safety Code is
31 amended to read:

32 1280.15. (a) A clinic, health facility, home health agency, or
33 hospice licensed pursuant to Section 1204, 1250, 1725, or 1745
34 shall prevent unlawful or unauthorized access to, and use or
35 disclosure of, patients' medical information, as defined in Section
36 56.05 of the Civil Code and consistent with Section 130203. For
37 purposes of this section, internal paper records, electronic mail,
38 or facsimile transmissions inadvertently misdirected within the
39 same facility or health care system within the course of
40 coordinating care or delivering services shall not constitute

1 unauthorized access to, or use or disclosure of, a patient's medical
2 information. The department, after investigation, may assess an
3 administrative penalty for a violation of this section of up to
4 twenty-five thousand dollars (\$25,000) per patient whose medical
5 information was unlawfully or without authorization accessed,
6 used, or disclosed, and up to seventeen thousand five hundred
7 dollars (\$17,500) per subsequent occurrence of unlawful or
8 unauthorized access, use, or disclosure of that patient's medical
9 information. For purposes of the investigation, the department
10 shall consider the clinic's, health facility's, agency's, or hospice's
11 history of compliance with this section and other related state and
12 federal statutes and regulations, the extent to which the facility
13 detected violations and took preventative action to immediately
14 correct and prevent past violations from recurring, and factors
15 outside its control that restricted the facility's ability to comply
16 with this section. The department shall have full discretion to
17 consider all factors when determining the amount of an
18 administrative penalty pursuant to this section.

19 (b) (1) A clinic, health facility, home health agency, or hospice
20 to which subdivision (a) applies shall report any unlawful or
21 unauthorized access to, or use or disclosure of, a patient's medical
22 information to the department no later than five business days after
23 the unlawful or unauthorized access, use, or disclosure has been
24 detected by the clinic, health facility, home health agency, or
25 hospice.

26 (2) Subject to subdivision (c), a clinic, health facility, home
27 health agency, or hospice shall also report any unlawful or
28 unauthorized access to, or use or disclosure of, a patient's medical
29 information to the affected patient or the patient's representative
30 at the last known address, no later than five business days after
31 the unlawful or unauthorized access, use, or disclosure has been
32 detected by the clinic, health facility, home health agency, or
33 hospice.

34 (c) (1) A clinic, health facility, home health agency, or hospice
35 shall delay the reporting, as required pursuant to paragraph (2) of
36 subdivision (b), of any unlawful or unauthorized access to, or use
37 or disclosure of, a patient's medical information beyond five
38 business days if a law enforcement agency or official provides the
39 clinic, health facility, home health agency, or hospice with a written
40 or oral statement that compliance with the reporting requirements

1 of paragraph (2) of subdivision (b) would likely impede the law
2 enforcement agency's investigation that relates to the unlawful or
3 unauthorized access to, and use or disclosure of, a patient's medical
4 information and specifies a date upon which the delay shall end,
5 not to exceed 60 days after a written request is made, or 30 days
6 after an oral request is made. A law enforcement agency or official
7 may request an extension of a delay based upon a written
8 declaration that there exists a bona fide, ongoing, significant
9 criminal investigation of serious wrongdoing relating to the
10 unlawful or unauthorized access to, and use or disclosure of, a
11 patient's medical information, that notification of patients will
12 undermine the law enforcement agency's investigation, and that
13 specifies a date upon which the delay shall end, not to exceed 60
14 days after the end of the original delay period.

15 (2) If the statement of the law enforcement agency or official
16 is made orally, then the clinic, health facility, home health agency,
17 or hospice shall do both of the following:

18 (A) Document the oral statement, including, but not limited to,
19 the identity of the law enforcement agency or official making the
20 oral statement and the date upon which the oral statement was
21 made.

22 (B) Limit the delay in reporting the unlawful or unauthorized
23 access to, or use or disclosure of, the patient's medical information
24 to the date specified in the oral statement, not to exceed 30 calendar
25 days from the date that the oral statement is made, unless a written
26 statement that complies with the requirements of this subdivision
27 is received during that time.

28 (3) A clinic, health facility, home health agency, or hospice
29 shall submit a report that is delayed pursuant to this subdivision
30 not later than five business days after the date designated as the
31 end of the delay.

32 (d) If a clinic, health facility, home health agency, or hospice
33 to which subdivision (a) applies violates subdivision (b), the
34 department may assess the licensee a penalty in the amount of one
35 hundred dollars (\$100) for each day that the unlawful or
36 unauthorized access, use, or disclosure is not reported to the
37 department or the affected patient, following the initial five-day
38 period specified in subdivision (b). However, the total combined
39 penalty assessed by the department under subdivision (a) and this
40 subdivision shall not exceed two hundred fifty thousand dollars

1 (\$250,000) per reported event. For enforcement purposes, it shall
2 be presumed that the facility did not notify the affected patient if
3 the notification was not documented. This presumption may be
4 rebutted by a licensee only if the licensee demonstrates, by a
5 preponderance of the evidence, that the notification was made.

6 (e) In enforcing subdivisions (a) and (d), the department shall
7 take into consideration the special circumstances of small and rural
8 hospitals, as defined in Section 124840, and primary care clinics,
9 as defined in subdivision (a) of Section 1204, in order to protect
10 access to quality care in those hospitals and clinics. When assessing
11 a penalty on a skilled nursing facility or other facility subject to
12 Section 1423, 1424, 1424.1, or 1424.5, the department shall issue
13 only the higher of either a penalty for the violation of this section
14 or a penalty for violation of Section 1423, 1424, 1424.1, or 1424.5,
15 not both.

16 (f) All penalties collected by the department pursuant to this
17 section, Sections 1280.1, 1280.3, and 1280.4, shall be deposited
18 into the Internal Departmental Quality Improvement Account,
19 which is hereby created within the Special Deposit Fund under
20 Section 16370 of the Government Code. Upon appropriation by
21 the Legislature, moneys in the account shall be expended for
22 internal quality improvement activities in the Licensing and
23 Certification Program.

24 (g) If the licensee disputes a determination by the department
25 regarding a failure to prevent or failure to timely report unlawful
26 or unauthorized access to, or use or disclosure of, patients' medical
27 information, or the imposition of a penalty under this section, the
28 licensee may, within 10 days of receipt of the penalty assessment,
29 request a hearing pursuant to Section 131071. Penalties shall be
30 paid when appeals have been exhausted and the penalty has been
31 upheld.

32 (h) In lieu of disputing the determination of the department
33 regarding a failure to prevent or failure to timely report unlawful
34 or unauthorized access to, or use or disclosure of, patients' medical
35 information, transmit to the department 75 percent of the total
36 amount of the administrative penalty, for each violation, within
37 30 business days of receipt of the administrative penalty.

38 (i) Notwithstanding any other law, the department may refer
39 violations of this section to the Office of Health Information
40 Integrity for enforcement pursuant to Section 130303.

1 (j) For purposes of this section, the following definitions shall
2 apply:

3 (1) “Reported event” means all breaches included in any single
4 report that is made pursuant to subdivision (b), regardless of the
5 number of breach events contained in the report.

6 (2) “Unauthorized” means the inappropriate access, review, or
7 viewing of patient medical information without a direct need for
8 medical diagnosis, treatment, or other lawful use as permitted by
9 the Confidentiality of Medical Information Act (Part 2.6
10 (commencing with Section 56) of Division 1 of the Civil Code)
11 or any other statute or regulation governing the lawful access, use,
12 or disclosure of medical information.

13 ~~SEC. 7.~~

14 *SEC. 10.* Section 1348.5 is added to the Health and Safety
15 Code, to read:

16 1348.5. ~~(a)~~—A health care service plan shall comply with the
17 provisions of Section 56.107 of the Civil Code to the extent
18 required by that section. To the extent this chapter conflicts with
19 Section 56.107 of the Civil Code, the provisions of Section 56.107
20 of the Civil Code shall control.

21 ~~(b) The department shall review health care service plan~~
22 ~~contracts and privacy policies for compliance with this section~~
23 ~~only during the normal application approval or modification~~
24 ~~process conducted pursuant to Sections 1351 and 1352.~~

25 ~~SEC. 8.~~

26 *SEC. 11.* Section 1627 of the Health and Safety Code is
27 amended to read:

28 1627. (a) (1) On or before July 1, 2011, the University of
29 California is requested to develop a plan to establish and administer
30 the Umbilical Cord Blood Collection Program for the purpose of
31 collecting units of umbilical cord blood for public use in
32 transplantation and providing nonclinical units for research
33 pertaining to biology and new clinical utilization of stem cells
34 derived from the blood and tissue of the placenta and umbilical
35 cord. The program shall conclude no later than January 1, 2018.

36 (2) For purposes of this article, “public use” means both of the
37 following:

38 (A) The collection of umbilical cord blood units from genetically
39 diverse donors that will be owned by the University of California.
40 This inventory shall be accessible by the National Registry and by

1 qualified California-based and other United States and international
2 registries and transplant centers to increase the likelihood of
3 providing suitably matched donor cord blood units to patients or
4 research participants who are in need of a transplant.

5 (B) Cord blood units with a lower number of cells than deemed
6 necessary for clinical transplantation and units that meet clinical
7 requirements, but for other reasons are unsuitable, unlikely to be
8 transplanted, or otherwise unnecessary for clinical use, may be
9 made available for research.

10 (b) (1) In order to implement the collection goals of this
11 program, the University of California may, commensurate with
12 available funds appropriated to the University of California for
13 this program, contract with one or more selected applicant entities
14 that have demonstrated the competence to collect and ship cord
15 blood units in compliance with federal guidelines and regulations.

16 (2) It is the intent of the Legislature that, if the University of
17 California contracts with another entity pursuant to this subdivision,
18 the following shall apply:

19 (A) The University of California may use a competitive process
20 to identify the best proposals submitted by applicant entities to
21 administer the collection and research objectives of the program,
22 to the extent that the University of California chooses not to
23 undertake these activities itself.

24 (B) In order to qualify for selection under this section to receive,
25 process, cryopreserve, or bank cord blood units, the entity shall,
26 at a minimum, have obtained an investigational new drug (IND)
27 exemption from the FDA or a biologic license from the FDA, as
28 appropriate, to manufacture clinical grade cord blood stem cell
29 units for clinical indications.

30 (C) In order to qualify to receive appropriate cord blood units
31 and placental tissue to advance the research goals of this program,
32 an entity shall, at a minimum, be a laboratory recognized as having
33 performed peer-reviewed research on stem and progenitor cells,
34 including those derived from placental or umbilical cord blood
35 and postnatal tissue.

36 (3) A medical provider or research facility shall comply with,
37 and shall be subject to, existing penalties for violations of all
38 applicable state and federal laws with respect to the protection of
39 any medical information, as defined in Section 56.05 of the Civil

1 Code, and any personally identifiable information contained in the
2 umbilical cord blood inventory.

3 (c) The University of California is encouraged to make every
4 effort to avoid duplication or conflicts with existing and ongoing
5 programs and to leverage existing resources.

6 (d) (1) All information collected pursuant to the program shall
7 be confidential, and shall be used solely for the purposes of the
8 program, including research. Access to confidential information
9 shall be limited to authorized persons who are bound by appropriate
10 institutional policies or who otherwise agree, in writing, to maintain
11 the confidentiality of that information.

12 (2) Any person who, in violation of applicable institutional
13 policies or a written agreement to maintain confidentiality,
14 discloses any information provided pursuant to this section, or
15 who uses information provided pursuant to this section in a manner
16 other than as approved pursuant to this section, may be denied
17 further access to any confidential information maintained by the
18 University of California, and shall be subject to a civil penalty not
19 exceeding one thousand dollars (\$1,000). The penalty provided
20 for in this section shall not be construed to limit or otherwise
21 restrict any remedy, provisional or otherwise, provided by law for
22 the benefit of the University of California or any other person
23 covered by this section.

24 (3) Notwithstanding the restrictions of this section, an individual
25 to whom the confidential information pertains shall have access
26 to his or her own personal information.

27 (e) It is the intent of the Legislature that the plan and
28 implementation of the program provide for both of the following:

29 (1) Limit fees for access to cord blood units to the reasonable
30 and actual costs of storage, handling, and providing units, as well
31 as for related services such as donor matching and testing of cord
32 blood and other programs and services typically provided by cord
33 blood banks and public use programs.

34 (2) The submittal of the plan developed pursuant to subdivision
35 (a) to the health and fiscal committees of the Legislature.

36 (f) It is additionally the intent of the Legislature that the plan
37 and implementation of the program attempt to provide for all of
38 the following:

39 (1) Development of a strategy to increase voluntary participation
40 by hospitals in the collection and storage of umbilical cord blood

1 and identify funding sources to offset the financial impact on
2 hospitals.

3 (2) Consideration of a medical contingency response program
4 to prepare for and respond effectively to biological, chemical, or
5 radiological attacks, accidents, and other public health emergencies
6 where victims potentially benefit from treatment.

7 (3) Exploration of the feasibility of operating the program as a
8 self-funding program, including the potential for charging users a
9 reimbursement fee.

10 *SEC. 12. Section 117705 of the Health and Safety Code is*
11 *amended to read:*

12 117705. “Medical waste generator” means any person whose
13 act or process produces medical waste and includes, but is not
14 limited to, a provider of health care, as defined in ~~subdivision (d)~~
15 ~~of~~ Section 56.05 of the Civil Code. All of the following are
16 examples of businesses that generate medical waste:

17 (a) Medical and dental offices, clinics, hospitals, surgery
18 centers, laboratories, research laboratories, unlicensed health
19 facilities, those facilities required to be licensed pursuant to
20 Division 2 (commencing with Section 1200), chronic dialysis
21 clinics, as regulated pursuant to Division 2 (commencing with
22 Section 1200), and education and research facilities.

23 (b) Veterinary offices, veterinary clinics, and veterinary
24 hospitals.

25 (c) Pet shops.

26 (d) Trauma scene waste management practitioners.

27 ~~SEC. 9.~~

28 *SEC. 13. Section 117928 of the Health and Safety Code is*
29 *amended to read:*

30 117928. (a) Any common storage facility for the collection
31 of medical waste produced by small quantity generators operating
32 independently, but sharing common storage facilities, shall have
33 a permit issued by the enforcement agency.

34 (b) A permit for any common storage facility specified in
35 subdivision (a) may be obtained by any one of the following:

36 (1) A provider of health care as defined in Section 56.05 of the
37 Civil Code.

38 (2) The registered hazardous waste transporter.

39 (3) The property owner.

1 (4) The property management firm responsible for providing
2 tenant services to the medical waste generators.

3 ~~SEC. 10.~~

4 *SEC. 14.* Section 120985 of the Health and Safety Code is
5 amended to read:

6 120985. (a) Notwithstanding Section 120980, the results of
7 an HIV test that identifies or provides identifying characteristics
8 of the person to whom the test results apply may be recorded by
9 the physician who ordered the test in the test subject's medical
10 record or otherwise disclosed without written authorization of the
11 subject of the test, or the subject's representative as set forth in
12 Section 121020, to the test subject's providers of health care, as
13 defined in Section 56.05 of the Civil Code, for purposes of
14 diagnosis, care, or treatment of the patient, except that for purposes
15 of this section, "providers of health care" does not include a health
16 care service plan regulated pursuant to Chapter 2.2 (commencing
17 with Section 1340) of Division 2.

18 (b) Recording or disclosure of HIV test results pursuant to
19 subdivision (a) does not authorize further disclosure unless
20 otherwise permitted by law.

21 ~~SEC. 11.~~

22 *SEC. 15.* Section 121010 of the Health and Safety Code is
23 amended to read:

24 121010. Notwithstanding Section 120975 or 120980, the results
25 of a blood test to detect antibodies to the probable causative agent
26 of AIDS may be disclosed to any of the following persons without
27 written authorization of the subject of the test:

28 (a) To the subject of the test or the subject's legal representative,
29 conservator, or to any person authorized to consent to the test
30 pursuant to subdivision (b) of Section 120990.

31 (b) To a test subject's provider of health care, as defined in
32 Section 56.05 of the Civil Code, except that for purposes of this
33 section, "provider of health care" does not include a health care
34 service plan regulated pursuant to Chapter 2.2 (commencing with
35 Section 1340) of Division 2.

36 (c) To an agent or employee of the test subject's provider of
37 health care who provides direct patient care and treatment.

38 (d) To a provider of health care who procures, processes,
39 distributes, or uses a human body part donated pursuant to the

1 Uniform Anatomical Gift Act (Chapter 3.5 (commencing with
2 Section 7150) of Part 1 of Division 7).

3 (e) (1) To the designated officer of an emergency response
4 employee, and from that designated officer to an emergency
5 response employee regarding possible exposure to HIV or AIDS,
6 but only to the extent necessary to comply with provisions of the
7 Ryan White Comprehensive AIDS Resources Emergency Act of
8 1990 (Public Law 101-381; 42 U.S.C. Sec. 201).

9 (2) For purposes of this subdivision, “designated officer” and
10 “emergency response employee” have the same meaning as these
11 terms are used in the Ryan White Comprehensive AIDS Resources
12 Emergency Act of 1990 (Public Law 101-381; 42 U.S.C. Sec.
13 201).

14 (3) The designated officer shall be subject to the confidentiality
15 requirements specified in Section 120980, and may be personally
16 liable for unauthorized release of any identifying information about
17 the HIV results. Further, the designated officer shall inform the
18 exposed emergency response employee that the employee is also
19 subject to the confidentiality requirements specified in Section
20 120980, and may be personally liable for unauthorized release of
21 any identifying information about the HIV test results.

22 ~~SEC. 12.~~

23 *SEC. 16.* Section 130201 of the Health and Safety Code is
24 amended to read:

25 130201. For purposes of this division, the following definitions
26 apply:

27 (a) “Director” means the Director of the Office of Health
28 Information Integrity.

29 (b) “Medical information” means the term as defined in Section
30 56.05 of the Civil Code.

31 (c) “Office” means the Office of Health Information Integrity.

32 (d) “Provider of health care” means the term as defined in
33 Sections 56.05 and 56.06 of the Civil Code.

34 (e) “Unauthorized access” means the inappropriate review or
35 viewing of patient medical information without a direct need for
36 diagnosis, treatment, or other lawful use as permitted by the
37 Confidentiality of Medical Information Act (Part 2.6 (commencing
38 with Section 56) of Division 1 of the Civil Code) or by other
39 statutes or regulations governing the lawful access, use, or
40 disclosure of medical information.

1 *SEC. 17. Section 791.02 of the Insurance Code is amended to*
2 *read:*

3 791.02. As used in this act:

4 (a) (1) “Adverse underwriting decision” means any of the
5 following actions with respect to insurance transactions involving
6 insurance coverage that is individually underwritten:

7 (A) A declination of insurance coverage.

8 (B) A termination of insurance coverage.

9 (C) Failure of an agent to apply for insurance coverage with a
10 specific insurance institution that the agent represents and that is
11 requested by an applicant.

12 (D) In the case of a property or casualty insurance coverage:

13 (i) Placement by an insurance institution or agent of a risk with
14 a residual market mechanism, with an unauthorized insurer, or
15 with an insurance institution that provides insurance to other than
16 preferred or standard risks, if in fact the placement is at other than
17 a preferred or standard rate. An adverse underwriting decision, in
18 case of placement with an insurance institution that provides
19 insurance to other than preferred or standard risks, shall not include
20 placement if the applicant or insured did not specify or apply for
21 placement as a preferred or standard risk or placement with a
22 particular company insuring preferred or standard risks, or

23 (ii) The charging of a higher rate on the basis of information
24 which differs from that which the applicant or policyholder
25 furnished.

26 (E) In the case of a life, health, or disability insurance coverage,
27 an offer to insure at higher than standard rates.

28 (2) Notwithstanding paragraph (1), any of the following actions
29 shall not be considered adverse underwriting decisions but the
30 insurance institution or agent responsible for their occurrence shall
31 nevertheless provide the applicant or policyholder with the specific
32 reason or reasons for their occurrence:

33 (A) The termination of an individual policy form on a class or
34 statewide basis.

35 (B) A declination of insurance coverage solely because coverage
36 is not available on a class or statewide basis.

37 (C) The rescission of a policy.

38 (b) “Affiliate” or “affiliated” means a person that directly, or
39 indirectly through one or more intermediaries, controls, is
40 controlled by or is under common control with another person.

1 (c) “Agent” means any person licensed pursuant to Chapter 5
2 (commencing with Section 1621), Chapter 5A (commencing with
3 Section 1759), Chapter 6 (commencing with Section 1760), Chapter
4 7 (commencing with Section 1800), or Chapter 8 (commencing
5 with Section 1831).

6 (d) “Applicant” means any person who seeks to contract for
7 insurance coverage other than a person seeking group insurance
8 that is not individually underwritten.

9 (e) “Consumer report” means any written, oral, or other
10 communication of information bearing on a natural person’s
11 creditworthiness, credit standing, credit capacity, character, general
12 reputation, personal characteristics, or mode of living that is used
13 or expected to be used in connection with an insurance transaction.

14 (f) “Consumer reporting agency” means any person who:

15 (1) Regularly engages, in whole or in part, in the practice of
16 assembling or preparing consumer reports for a monetary fee.

17 (2) Obtains information primarily from sources other than
18 insurance institutions.

19 (3) Furnishes consumer reports to other persons.

20 (g) “Control,” including the terms “controlled by” or “under
21 common control with,” means the possession, direct or indirect,
22 of the power to direct or cause the direction of the management
23 and policies of a person, whether through the ownership of voting
24 securities, by contract other than a commercial contract for goods
25 or nonmanagement services, or otherwise, unless the power is the
26 result of an official position with or corporate office held by the
27 person.

28 (h) “Declination of insurance coverage” means a denial, in
29 whole or in part, by an insurance institution or agent of requested
30 insurance coverage.

31 (i) “Individual” means any natural person who is any of the
32 following:

33 (1) In the case of property or casualty insurance, is a past,
34 present, or proposed named insured or certificate holder.

35 (2) In the case of life or disability insurance, is a past, present,
36 or proposed principal insured or certificate holder.

37 (3) Is a past, present, or proposed policyowner.

38 (4) Is a past or present applicant.

39 (5) Is a past or present claimant.

1 (6) Derived, derives, or is proposed to derive insurance coverage
2 under an insurance policy or certificate subject to this act.

3 (j) “Institutional source” means any person or governmental
4 entity that provides information about an individual to an agent,
5 insurance institution, or insurance-support organization, other than
6 any of the following:

7 (1) An agent.

8 (2) The individual who is the subject of the information.

9 (3) A natural person acting in a personal capacity rather than in
10 a business or professional capacity.

11 (k) “Insurance institution” means any corporation, association,
12 partnership, reciprocal exchange, interinsurer, Lloyd’s insurer,
13 fraternal benefit society, or other person engaged in the business
14 of insurance. “Insurance institution” shall not include agents,
15 insurance-support organizations, or health care service plans
16 regulated pursuant to the Knox-Keene Health Care Service Plan
17 Act, Chapter 2.2 (commencing with Section 1340) of Division 2
18 of the Health and Safety Code.

19 (l) “Insurance-support organization” means:

20 (1) Any person who regularly engages, in whole or in part, in
21 the business of assembling or collecting information about natural
22 persons for the primary purpose of providing the information to
23 an insurance institution or agent for insurance transactions,
24 including either of the following:

25 (A) The furnishing of consumer reports or investigative
26 consumer reports to an insurance institution or agent for use in
27 connection with an insurance transaction.

28 (B) The collection of personal information from insurance
29 institutions, agents, or other insurance-support organizations for
30 the purpose of detecting or preventing fraud, material
31 misrepresentation or material nondisclosure in connection with
32 insurance underwriting or insurance claim activity.

33 (2) Notwithstanding paragraph (1), the following persons shall
34 not be considered “insurance-support organizations”: agents,
35 governmental institutions, insurance institutions, medical care
36 institutions, medical professionals, and peer review committees.

37 (m) “Insurance transaction” means any transaction involving
38 insurance primarily for personal, family, or household needs rather
39 than business or professional needs that entails either of the
40 following:

- 1 (1) The determination of an individual's eligibility for an
2 insurance coverage, benefit, or payment.
- 3 (2) The servicing of an insurance application, policy, contract,
4 or certificate.
- 5 (n) "Investigative consumer report" means a consumer report
6 or portion thereof in which information about a natural person's
7 character, general reputation, personal characteristics, or mode of
8 living is obtained through personal interviews with the person's
9 neighbors, friends, associates, acquaintances, or others who may
10 have knowledge concerning those items of information.
- 11 (o) "Medical care institution" means any facility or institution
12 that is licensed to provide health care services to natural persons,
13 including but not limited to, hospitals, skilled nursing facilities,
14 home health agencies, medical clinics, rehabilitation agencies, and
15 public health agencies.
- 16 (p) "Medical professional" means any person licensed or
17 certified to provide health care services to natural persons,
18 including but not limited to, a physician, dentist, nurse, optometrist,
19 physical or occupational therapist, psychiatric social worker,
20 clinical dietitian, clinical psychologist, chiropractor, pharmacist,
21 or speech therapist.
- 22 (q) "Medical record information" means personal information
23 that is both of the following:
- 24 (1) Relates to an individual's physical or mental condition,
25 medical history or medical treatment.
- 26 (2) Is obtained from a medical professional or medical care
27 institution, from the individual, or from the individual's spouse,
28 parent, or legal guardian.
- 29 (r) "Person" means any natural person, corporation, association,
30 partnership, limited liability company, or other legal entity.
- 31 (s) "Personal information" means any individually identifiable
32 information gathered in connection with an insurance transaction
33 from which judgments can be made about an individual's character,
34 habits, avocations, finances, occupation, general reputation, credit,
35 health, or any other personal characteristics. "Personal information"
36 includes an individual's name and address and "medical record
37 information" but does not include "privileged information."
- 38 (t) "Policyholder" means any person who is any of the following:
- 39 (1) In the case of individual property or casualty insurance, is
40 a present named insured.

1 (2) In the case of individual life or disability insurance, is a
2 present policyowner.

3 (3) In the case of group insurance, which is individually
4 underwritten, is a present group certificate holder.

5 (u) “Pretext interview” means an interview whereby a person,
6 in an attempt to obtain information about a natural person, performs
7 one or more of the following acts:

8 (1) Pretends to be someone he or she is not.

9 (2) Pretends to represent a person he or she is not in fact
10 representing.

11 (3) Misrepresents the true purpose of the interview.

12 (4) Refuses to identify himself or herself upon request.

13 (v) “Privileged information” means any individually identifiable
14 information that both:

15 (1) Relates to a claim for insurance benefits or a civil or criminal
16 proceeding involving an individual.

17 (2) Is collected in connection with or in reasonable anticipation
18 of a claim for insurance benefits or civil or criminal proceeding
19 involving an individual. However, information otherwise meeting
20 the requirements of this division shall nevertheless be considered
21 “personal information” under this act if it is disclosed in violation
22 of Section 791.13.

23 (w) “Residual market mechanism” means the California FAIR
24 Plan Association, Chapter 10 (commencing with Section 10101)
25 of Part 1 of Division 2, and the assigned risk plan, Chapter 1
26 (commencing with Section 11550) of Part 3 of Division 2.

27 (x) “Termination of insurance coverage” or “termination of an
28 insurance policy” means either a cancellation or nonrenewal of an
29 insurance policy, in whole or in part, for any reason other than the
30 failure to pay a premium as required by the policy.

31 (y) “Unauthorized insurer” means an insurance institution that
32 has not been granted a certificate of authority by the director to
33 transact the business of insurance in this state.

34 (z) “Commissioner” means the Insurance Commissioner.

35 (aa) “Confidential communications request” means a request
36 by an insured covered under a health insurance policy that
37 insurance communications containing medical information be
38 communicated to him or her at a specific mail or e-mail address
39 or specific telephone number, as designated by the insured.

1 (ab) “Endanger” means that the insured covered under a health
2 insurance policy fears that the disclosure of his or her medical
3 information could subject the insured covered under a health
4 insurance policy to harassment or abuse.

5 (ac) “Sensitive services” means all health care services
6 described in Sections 6924, 6925, 6926, 6927, 6928, and 6929 of
7 the Family Code, and Sections 121020 and 124260 of the Health
8 and Safety Code, obtained by a patient of any age at or above the
9 minimum age specified for consenting to the service specified in
10 the section.

11 (ad) “Medical information” means any individually identifiable
12 information, in electronic or physical form, in possession of or
13 derived from a provider of health care, health insurer,
14 pharmaceutical company, or contractor regarding a patient’s
15 medical history, mental or physical condition, or treatment.
16 “Individually identifiable” means that the medical information
17 includes or contains any element of personal identifying
18 information sufficient to allow identification of the individual, such
19 as the patient’s name, address, electronic mail address, telephone
20 number, or social security number; or other information that, alone
21 or in combination with other publicly available information,
22 reveals the individual’s identity.

23 ~~SEC. 13.~~

24 SEC. 18. Section 791.29 is added to the Insurance Code, to
25 read:

26 ~~791.29.—(a) A health insurer, as defined in subdivision (h) of~~
27 ~~Section 56.05 of the Civil Code, shall comply with the provisions~~
28 ~~of Section 56.107 of the Civil Code to the extent required by that~~
29 ~~section. To the extent this article conflicts with Section 56.107 of~~
30 ~~the Civil Code, the provisions of Section 56.107 of the Civil Code~~
31 ~~shall control.~~

32 ~~(b) The department shall review insurance products and privacy~~
33 ~~policies for compliance with this section only during the normal~~
34 ~~policy issuance process conducted pursuant to Sections 10290 and~~
35 ~~10291.~~

36 791.29. (a) Notwithstanding any other law, and to the extent
37 permitted by federal law, a health insurer shall take the following
38 steps to protect the confidentiality of an insured’s medical
39 information on and after January 1, 2015:

1 (1) A health insurer shall permit an insured to request, and shall
2 accommodate requests for, communication in the form and format
3 requested by the individual, if it is readily producible in the
4 requested form and format, or at alternative locations, if the
5 insured clearly states either that the communication discloses
6 medical information or provider name and address relating to
7 receipt of sensitive services or that disclosure of all or part of the
8 medical information or provider name and address could endanger
9 him or her.

10 (2) A health insurer may require the insured to make a request
11 for a confidential communication described in paragraph (1) in
12 writing or by electronic transmission.

13 (3) A health insurer may require that a confidential
14 communications request contain a statement that the request
15 pertains to either medical information related to the receipt of
16 sensitive services or that disclosure of all or part of the medical
17 information could endanger the insured. The health insurer shall
18 not require an explanation as to the basis for a insured's statement
19 that disclosure could endanger the insured.

20 (4) The confidential communication request shall be valid until
21 the insured submits a revocation of the request, or a new
22 confidential communication request is submitted.

23 (5) For the purposes of this section, a confidential
24 communications request must be implemented by the health insurer
25 within seven calendar days of the receipt of an electronic
26 transmission or telephonic request or within 14 calendar days of
27 receipt by first class mail. The health insurer shall acknowledge
28 receipt of the confidential communications request and advise the
29 insured of the status of implementation of the request if an insured
30 contacts the insurer.

31 (b) Notwithstanding subdivision (a), a provider of health care
32 may make arrangements with the insured for the payment of benefit
33 cost sharing and communicate that arrangement with the insurer.

34 (c) A health insurer shall not condition coverage on the waiver
35 of rights provided in this section.

36 ~~SEC. 14.~~

37 SEC. 19. Section 3208.05 of the Labor Code is amended to
38 read:

39 3208.05. (a) "Injury" includes a reaction to or a side effect
40 arising from health care provided by an employer to a health care

1 worker, which health care is intended to prevent the development
2 or manifestation of any bloodborne disease, illness, syndrome, or
3 condition recognized as occupationally incurred by Cal-OSHA,
4 the federal Centers for Disease Control and Prevention, or other
5 appropriate governmental entities. This section shall apply only
6 to preventive health care that the employer provided to a health
7 care worker under the following circumstances: (1) prior to an
8 exposure because of risk of occupational exposure to such a
9 disease, illness, syndrome, or condition, or (2) where the preventive
10 care is provided as a consequence of a documented exposure to
11 blood or bodily fluid containing blood that arose out of and in the
12 course of employment. Such a disease, illness, syndrome, or
13 condition includes, but is not limited to, hepatitis, and the human
14 immunodeficiency virus. Such preventive health care, and any
15 disability indemnity or other benefits required as a result of the
16 preventive health care provided by the employer, shall be
17 compensable under the workers' compensation system. The
18 employer may require the health care worker to document that the
19 employer provided the preventive health care and that the reaction
20 or side effects arising from the preventive health care resulted in
21 lost work time, health care costs, or other costs normally
22 compensable under workers' compensation.

23 (b) The benefits of this section shall not be provided to a health
24 care worker for a reaction to or side effect from health care
25 intended to prevent the development of the human
26 immunodeficiency virus if the worker claims a work-related
27 exposure and if the worker tests positive within 48 hours of that
28 exposure to a test to determine the presence of the human
29 immunodeficiency virus.

30 (c) For purposes of this section, "health care worker" includes
31 any person who is an employee of a provider of health care as
32 defined in Section 56.05 of the Civil Code, and who is exposed to
33 human blood or other bodily fluids contaminated with blood in
34 the course of employment, including, but not limited to, a registered
35 nurse, a licensed vocational nurse, a certified nurse aide, clinical
36 laboratory technologist, dental hygienist, physician, janitor, and
37 housekeeping worker. "Health care worker" does not include an
38 employee who provides employee health services for an employer
39 primarily engaged in a business other than providing health care.

40 *SEC. 20. Section 3762 of the Labor Code is amended to read:*

1 3762. (a) Except as provided in subdivisions (b) and (c), the
2 insurer shall discuss all elements of the claim file that affect the
3 employer's premium with the employer, and shall supply copies
4 of the documents that affect the premium at the employer's expense
5 during reasonable business hours.

6 (b) The right provided by this section shall not extend to any
7 document that the insurer is prohibited from disclosing to the
8 employer under the attorney-client privilege, any other applicable
9 privilege, or statutory prohibition upon disclosure, or under Section
10 1877.4 of the Insurance Code.

11 (c) An insurer, third-party administrator retained by a
12 self-insured employer pursuant to Section 3702.1 to administer
13 the employer's workers' compensation claims, and those employees
14 and agents specified by a self-insured employer to administer the
15 employer's workers' compensation claims, are prohibited from
16 disclosing or causing to be disclosed to an employer, any medical
17 information, as defined in ~~subdivision (b) of~~ Section 56.05 of the
18 Civil Code, about an employee who has filed a workers'
19 compensation claim, except as follows:

20 (1) Medical information limited to the diagnosis of the mental
21 or physical condition for which workers' compensation is claimed
22 and the treatment provided for this condition.

23 (2) Medical information regarding the injury for which workers'
24 compensation is claimed that is necessary for the employer to have
25 in order for the employer to modify the employee's work duties.

26 *SEC. 21. Section 5406.6 of the Labor Code is amended to read:*

27 5406.6. (a) In the case of the death of a health care worker, a
28 worker described in Section 3212, or a worker described in Section
29 830.5 of the Penal Code from an HIV-related disease, the period
30 within which proceedings may be commenced for the collection
31 of benefits provided by Article 4 (commencing with Section 4700)
32 of Chapter 2 of Part 2 is one year from the date of death, providing
33 that one or more of the following events has occurred:

34 (1) A report of the injury or exposure was made to the employer
35 or to a governmental agency authorized to administer industrial
36 injury claims, within one year of the date of the injury.

37 (2) The worker has complied with the notice provisions of this
38 chapter and the claim has not been finally determined to be
39 noncompensable.

1 (3) The employer provided, or was ordered to provide, workers’
2 compensation benefits for the injury prior to the date of death.
3 (b) For the purposes of this section, “health care worker” means
4 an employee who has direct contact, in the course of his or her
5 employment, with blood or other bodily fluids contaminated with
6 blood, or with other bodily fluids identified by the Division of
7 Occupational Safety and Health as capable of transmitting HIV,
8 who is either (1) any person who is an employee of a provider of
9 health care, as defined in ~~subdivision (d)~~ of Section 56.05 of the
10 Civil Code, including, but not limited to, a registered nurse,
11 licensed vocational nurse, certified nurse aide, clinical laboratory
12 technologist, dental hygienist, physician, janitor, or housekeeping
13 worker, or (2) an employee who provides direct patient care.
14 ~~SEC. 15.~~
15 *SEC. 22.* No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.